

**REMARKS**

Applicant thanks the Examiner for the courtesies extended to Applicant's representative during the interview on April 2, 2009. During that interview, the rejections contained in the Office Action mailed on February 13, 2009, were discussed. The substance of the interview is incorporated into this response.

In the Office Action,<sup>1</sup> the Examiner rejected claims 1-7, 9, 10, 12-25, 27, 28, 30-35, 37, and 38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,878,404 to Stout, Jr. et al. ("Stout") in view of U.S. Patent No. 5,742,775 to King ("King"); and rejected claims 11 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Stout in view of King, and further in view of a publication titled "Annuities and Bond Discount" by R. J. Bennett ("Bennett").<sup>2</sup>

Applicant amends claims 1-3, 7, 9, 10, 12-14, 19, 20, 22, 23, 27, 28, 30, 31, 33, 35, 37, and 38, and cancel claims 24 and 34. Claims 39-42 were previously withdrawn. Claims 1-7, 9-23, 25, 27-33, 35, 37, and 38 are currently being examined.

Applicant respectfully traverses the rejection of claims 1-7, 9, 10, 12-25, 27, 28, 30-35, 37, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Stout in view of King. A *prima facie* case of obviousness has not been established at least because the Office Action does not correctly ascertain the scope and content of the prior art, and the differences between the prior art and Applicant's claims are such that it would not have

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of certain references and claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

<sup>2</sup> The Examiner's rejection cites to "NPL." (Office Action at 7.) Applicant assumes that "NPL" refers to Bennett, as cited in the Notice of References Cited attached to the Office Action mailed January 29, 2008.

been obvious for one of ordinary skill in the art at the time of the invention to modify the prior art to arrive at Applicant's claimed invention.

Independent claim 1, for example, recites a computer-implemented method for controlling a system to provide a mortgage, said method comprising: receiving a fixed payment for the mortgage, the fixed payment being based on an initial interest rate serving as a maximum interest rate; qualifying, when a current interest rate has declined, a first revised interest rate for an outstanding balance of the mortgage, the first revised interest rate being lower than the maximum interest rate, wherein qualifying includes determining, using a processor, the first revised interest rate and evaluating a loan to value ratio, an appraisal of a property, and a credit history; determining, when the current interest rate has increased and using the processor, a second revised interest rate for the outstanding balance of the mortgage, wherein the second revised interest rate is greater than the first revised interest rate and does not exceed the maximum interest rate; determining a principal and interest amount based on at least one of the first revised interest rate and the second revised interest rate; determining a difference between the fixed payment and a sum of the principal and interest amount; and reducing a principal balance of the mortgage based on the difference. Neither Stout nor King, taken individually or in combination, teaches or suggests the combination of features recited in claim 1.

The Office Action asserts that Stout discloses qualifying a first "revised interest rate . . . [by] evaluating a loan to value ratio [and] an appraisal of a property" in Fig. 5, col. 5: 54-67, and col. 6:1-44. (Office Action at 3, 8.) Applicant disagrees. Stout, including the cited portions, is silent on qualifying a "first revised interest rate" based on

a “loan to value ratio” and “an appraisal of a property,” as recited by claim 1. Because Stout does not consider property value in resetting the interest rate, Stout’s system provides a lower interest rate to a borrower even when the property value has declined. Accordingly, a lender is exposed to a greater risk: the value of the underlying asset securing the mortgage (the property) may be worth less, and yet the lender receives a lower interest payment. In contrast, and exemplary of the significant differences from the cited references, claim 1 requires qualifying a “first revised interest rate [that is] lower than the maximum interest rate [by] . . . evaluating a loan to value ratio [and] an appraisal of a property.” King fails to cure the deficiencies of Stout, nor does the Examiner rely on King for such teachings.

Further, independent claim 1 requires “determining a . . . second revised interest rate [that] is greater than the first revised interest rate and does not exceed the maximum interest rate.” (Emphasis added.) Stout fails to teach or suggest such a “second revised interest rate.” Stout acknowledges that “known systems for managing loan amortization do not adjust the signals indicative of the interest rate on fixed-rate loans,” and discloses a system for reducing an interest rate while maintaining a fixed payment. Stout, 2:28-31 (emphasis added); Fig. 6. Thus, in another significant difference, Stout does not teach or suggest “determining a second revised interest rate that is greater than the first revised interest rate,” that is, after reducing an interest rate, raising it to an amount that “does not exceed the maximum interest rate,” while maintaining a “fixed payment” for a single mortgage, as recited by claim 1. By allowing the interest rate to float down and up while maintaining a “fixed payment,” embodiments consistent with claim 1 provide protection for both a borrower and a lender whether

interest rates are decreasing or increasing. King fails to cure the deficiencies of Stout, nor does the Examiner rely on King for such teachings.

Because neither Stout nor King, taken individually or in combination, teaches or suggests the combination of features recited by claim 1, the Office Action does not properly ascertain the scope and content of the prior art nor properly ascertain the differences between the prior art and the claimed invention. Accordingly, no *prima facie* case of obviousness has been established for claim 1. Independent claims 22, 23, and 33, although of different scope than claim 1, patentably distinguish from Stout and King for at least the same reasons as claim 1. Claims 2-7, 9, 10, 12-22, 25, 27, 28, 30-32, 35, 37, and 38 depend from independent claims 1, 23, or 33, and therefore include all of the features recited therein. Accordingly, claims 2-7, 9, 10, 12-22, 25, 27, 28, 30-32, 35, 37, and 38 patentably distinguish from Stout and King for at least the same reasons as those stated above with respect to claims 1, 23, and 33, as well as by reason of reciting additional features that are neither taught nor suggested by the cited references. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of pending claims 1-7, 9, 10, 12-23, 25, 27, 28, 30-33, 35, and 37-38 under § 103(a) as being unpatentable over Stout in view of King.

Applicant respectfully traverses the rejection of claims 11 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Stout in view of King, and further in view of Bennett. Claims 11 and 29 depend from independent claims 1 and 23 and therefore include all of the features recited therein in addition to reciting other features that are neither taught nor suggested by the cited references. Bennett fails to cure the

deficiencies of Stout and King discussed above with respect to claims 11 and 29, nor does the Examiner rely on Bennett for such teachings.

Accordingly, because the cited references, taken individually or in combination, fail to teach or suggest the combination of features required by claims 11 and 29, the Office Action does not properly ascertain the scope and content of the prior art nor properly ascertain the differences between the prior art and the claimed invention. Accordingly, no *prima facie* case of obviousness has been established for claims 11 and 29. Applicant therefore respectfully requests the Examiner to reconsider and withdraw the rejection of claims 11 and 29 under § 103(a).

In view of the foregoing, Applicant requests the timely allowance of the pending claims.

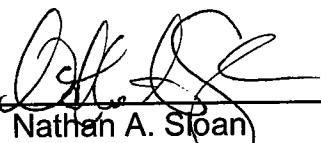
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: May 11, 2009

By: \_\_\_\_\_

  
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